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SUMMARY RECORD OF THE SECOND PART (PUBLIC)*
OF THE 44th MEETING

Held at the Palais des Nations, Geneva,
on Monday, 1 March 1993, at 10 a.m.

Chairman: Mr. ENNACEUR (Tunisia)
later: Mr. FLINTERMAN (Netherlands)

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* The summary record of the first part (closed) of the meeting appears as document E/CN.4/1993/SR.44.

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The public meeting began at 11.15 a.m.

FURTHER PROMOTION AND ENCOURAGEMENT OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS, INCLUDING THE QUESTION OF THE PROGRAMME AND METHODS OF WORK OF THE COMMISSION:

(a) ALTERNATIVE APPROACHES AND WAYS AND MEANS WITHIN THE UNITED NATIONS SYSTEM FOR IMPROVING THE EFFECTIVE ENJOYMENT OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS;

(b) NATIONAL INSTITUTIONS FOR THE PROMOTION AND PROTECTION OF HUMAN RIGHTS;

(c) COORDINATING ROLE OF THE CENTRE FOR HUMAN RIGHTS WITHIN THE UNITED NATIONS BODIES AND MACHINERY DEALING WITH THE PROMOTION AND PROTECTION OF HUMAN RIGHTS

(agenda item 11) (continued) (E/CN.4/1993/8, 29 and Add.1, 30-35, 87*, 90 and 96; E/CN.4/1993/NGO/2, 11 and 17).

1. Mr. RODRIGUEZ ALPIZAR (Costa Rica) said that he wished to avail himself of the opportunity afforded him to describe some of the mechanisms that were in place in Costa Rica and some of the measures which had been adopted in that country to promote human rights programmes. The most significant measure had been in 1949 with the abolition of the army, a useless and extremely costly institution for a developing country. The resultant savings had been allocated to education, health, housing and other programmes. Along the same lines, the Costa Rican Parliament had, in January 1993, adopted a law on the protection of the inhabitants of Costa Rica (Ley de Defensoria de los Habitantes), which was the culmination of a set of mechanisms for monitoring and protecting human rights, established during the 1980s in the form of services for the protection of human rights. Those bodies were responsible not only for receiving complaints but also for promoting human rights throughout the country. Consequently, for over 10 years there had been services for the protection of women, children, the consumer etc., in Costa Rica. Under the new Ley de Defensoria, those services would no longer come under the Ministry of Justice and would be completely autonomous. Furthermore, article 10 of the Constitution had been amended to allow the establishment of a special division of the Supreme Court of Justice which would decide on the constitutionality of norms of all kinds and of acts of public law.

2. Concerning the link between education and human rights, his delegation wished to highlight the fact that every year during the 11 years of compulsory primary and secondary education, one of the world's great religions, cultures or philosophies was studied. From their earliest youth, children were taught about the major international instruments for the protection of human rights, which formed an integral part of the school programmes. In that connection, Costa Rica believed that States did indeed have a duty to develop educational activities in the light of the fundamental values of international human rights law. His delegation would therefore submit a draft resolution entitled "Human rights and education" under agenda item 11 (a). Besides, any activity organized by any sector of civil society in order to promote human rights - as

well as democratic and participatory processes - called for a thorough knowledge of those rights and of the relevant international instruments. Consequently, education in human rights whether official or unofficial, was of primary importance at all levels of the society.

3. His delegation also welcomed the important work being done by the various regional bodies specializing in human rights, and in particular by the Inter-American Institute of Human Rights which had organized 10 annual interdisciplinary courses since 1983, as well as 118 seminars in 13 countries of the region since 1985. The Institute was also endeavouring to promote human rights teaching programmes for the armed forces and police of the different countries of the region.

4. Lastly, his delegation continued to think that the appointment of a high commissioner for human rights was indispensable. In fact, since the "cold war" had ended and the barriers had fallen, his delegation felt that the time had come for the United Nations to create a body that could respond speedily and effectively to the violations of fundamental human rights that continued to be perpetrated throughout the world.

5. In conclusion, his delegation welcomed the very interesting statements that had been made on agenda item 11; statements of that kind made for an exchange of experiences and viewpoints that was indispensable for improving the various programmes for the promotion and protection of human rights.

6. Mr. Flinterman (Netherlands) took the Chair.

7. Mr. LAMEMAN (International Work Group for Indigenous Affairs - Confederacy of Treaty Six First Nations) said that what was taking place in the Commission and what would take place throughout 1993, the International Year for the World's Indigenous People, represented a huge step forward for indigenous peoples. During the 10 years that had elapsed since the establishment in 1982, under the auspices of the Commission, of the Working Group on Indigenous Populations, and as a result of the initiatives of other United Nations bodies, the indigenous peoples had been able to consult each other in an attempt to resolve their common problems. It was particularly encouraging to see that the Nobel Peace Prize had been awarded to Mrs. Rigoberta Menchú, who fought for her own people and all indigenous peoples.

8. The standard-setting activities of the Working Group had borne fruit, because for the first time indigenous peoples had been involved in the preparation of a United Nations document, the draft universal declaration on the rights of indigenous peoples. It would however, be ill-advised to rush the work on the draft and the Working Group had been absolutely right in recommending that regional meetings should be held, for example, in South America and in Asia, to enable the indigenous peoples to make their views known. As had been recommended, the activities of the International Year might culminate in something more permanent, such as the establishment of a sub-commission on the rights of indigenous peoples. Equally significant was the study on treaties, agreements and other constructive arrangements between

States and indigenous populations which was being carried out by Mr. Alfonso Martinez, with which not only the indigenous peoples but also the States involved should be associated.

9. The International Year brought hope for the indigenous peoples of the Americas. In contrast to the last 500 years during which those populations, who had extended the hand of friendship to Christopher Columbus, had known only subjugation, attempted assimilation and cultural genocide, the next 500 years should be years of understanding, respect and peaceful coexistence. The elders had foretold the arrival of an alien people on the North American continent, which today was still attracting immigrants from all over the world. The year 1993 therefore should mark the dawn of a new partnership with the Governments currently occupying the indigenous territories. However, it was increasingly difficult to have confidence in those Governments. Canada, for example, had taken the initiative of submitting the resolution proclaiming 1993 as the International Year for the World's Indigenous People and the idea of a new partnership had been menticned in the draft resolution but in the view of the First Nations, the Canadian Government had done nothing new to make that theme a reality and to give effect to the 1876 treaty between the British Crown and the First Nations. Recently, there had been an increasing trend towards the unilateral transfer of certain essential obligations of the Federal Government of Canada to the province of Alberta; that was not in accordance with the treaty.

10. The First Nations, on whose behalf he was speaking, respected the sacred treaty obligations which they had contracted. They therefore urged the Canadian and other Governments that had concluded treaties with indigenous peoples to begin by honouring those treaties; that should greatly simplify the settlement of the other problems that arose today.

11. Mr. Ennaceur (Tunisia) resumed the Chair.

12. Ms. ELGARRESTA (International Immigrants Foundation Inc.) said that the agenda item under consideration should enable the Commission to reflect, in theory and in practice, on the responsibility incurred by all, but primarily by Governments, for finding solutions to the pressing problems of mankind. However, since the will was lacking, it was up to the United Nations to take action so that so many human beings would not feel abandoned.

13. First of all, it was imperative to establish an emergency mechanism in order to enable the United Nations to react promptly to serious human rights violations, for example by the immediate dispatch of a delegation of experts to gather evidence at first hand, formulate conclusions and quickly submit a report and recommendations. The United Nations should not wait patiently until a crisis had broken out and until there were victims and mass exoduses - as had recently occurred in Yugoslavia, Cuba and Haiti - before beginning to think about what could be done: the longer an unjust situation continued, the more difficult it was to resolve it. If fascism, communism and apartheid had been taken up immediately by a body such as the United Nations, many atrocities and much suffering would have been avoided.

14. In addition, another group of United Nations experts could meet immediately the authorities of the country in question, in order to persuade them that they owed it to their people and all mankind to settle the problem which had arisen.

15. In so far as societies were entities in the process of change, Government machinery should also evolve. The concepts of right and left had become outmoded and, because of the staggering speed of technical and scientific progress, today's world had changed more in the last 30 years than during the two previous centuries. The peoples were justifiably demanding more rights, more freedoms and a better quality of life, and even the idea that all human beings were born with equal ability had been scientifically proven.

16. People were well aware of what was happening in Iran, Iraq, Yugoslavia and Haiti and even in some countries that had democratic structures. However, some distinctions also had to be made because in China, Viet Nam, Romania and especially in Cuba, all rights and all freedoms were being flouted.

17. Mrs. SILVERA NUÑEZ (Cuba) drew attention to the rules of procedure and requested the Chairman to inform the speaker that she should confine her remarks to the agenda item under consideration, namely item 11, and not refer to specific cases, since those were dealt with under agenda item 12.

18. The CHAIRMAN reminded the representative of the International Immigrants Foundation that she should refrain from referring to countries or to situations involving a particular country.

19. Ms. ELGARRESTA (International Immigrants Foundation), continuing, said that, in order to act, the United Nations based itself initially on the information provided by the national organizations for the protection of human rights. But those same organizations were also targets for repression by those who wished to conceal their crimes and maintain an appearance of respectability. The United Nations should therefore strive to protect those organizations. The island known to everyone was an eloquent example of that state of affairs: after the visit by a working group of the Commission to the island in 1988, and the appointment by the United Nations of a special rapporteur, the human rights movement had been able to develop and had culminated in the creation of the Cuban Democratic Coalition.

20. The CHAIRMAN said that the visit to which reference had just been made was not germane to the agenda item under consideration. He therefore informed the speaker that she might not continue to speak.

21. Mr. FALLA SANCHEZ (World Christian Life Community) said that he wished, within the theoretical context of the study submitted by the Representative of the Secretary-General, Mr. Francis Deng, on the question of internally displaced persons (E/CN.4/1993/35), to refer to the specific situation of the Communities in Resistance in the Ixcán area of Guatemala. The Representative of the Secretary-General had listed the systematic violation of human rights and armed conflicts as one of the six causes of displacement. However, the fact was that an armed conflict was raging in the area in question, where it

was demonstrated qualitatively, if not quantitatively, since the population involved numbered only 6,000 people, according to the authorities, that the Government did not respect human rights.

22. The testimony of a Guatemalan Jesuit who had lived six years in those communities should be read. According to Mr. Deng's report (para. 31), in some countries, being identified as a displaced person led to a presumption that one was subversive. Thus, the army was accusing the speaker and the populations of the Communities in Resistance of belonging to the guerrilla forces, but that was by no means certain.

23. Moreover, the report of the Independent Expert, Mr. Tomuschat, on the situation of human rights in Guatemala (E/CN.4/1993/10) also stated that there had been systematic bombing of the civilian population in the Ixcán area, especially in late July 1992. Those communities did not, however, constitute a military target, because there had been no skirmishes with the guerrilla fighters in the area that had been bombed. Paradoxically, the representatives of the Guatemalan Government and army had been attending peace talks in Mexico at that time.

24. In his report, the Representative of the Secretary-General (E/CN.4/1993/35, para. 30) stressed that many fundamental human rights were affected as a result of internal displacement. In his testimony, the Jesuit mentioned earlier reported many acts of destruction and plunder committed by military personnel in three communities. It had also been revealed that many refugees were continuing to leave Guatemala, precisely when the return of thousands of other people to the country was being organized. Contrary to what one might have thought, the Guatemalan army had therefore not abandoned its scorched earth policy, after 11 years of genocide. In the third community that the armed forces had besieged, they had not hesitated to plunder church property and to seize the baptismal certificates of more than 500 children. In whose name had they committed those acts? In his report, Mr. Deng (paras. 62 and 63) dealt with the question of humanitarian law and of the treatment of persons who were not directly participating in the armed conflict. It was emphasized that every effort should be made to guarantee the security of the civilian population. In view of those occurrences, the Episcopal Conference had demanded the return of the stolen documents, not simply to give back to the Church what belonged to it, but also to compel the army to prove that the speaker indeed belonged to the guerrilla forces.

25. A document published in September 1992 recounted the tragedy of those internally displaced persons, who in the end had had to decide to emigrate to Mexico. That document reported that 773 people had been killed or had disappeared.

26. Confronted with that situation, the United Nations should, as requested by the representative of the Human Rights Office of the Archdiocese of Guatemala, investigate all those violations and see to it that the human rights were indeed respected. It was in fact ironic that while peace talks were going on the war was intensifying. The countries which refused to have the case of Guatemala under item 12 of the Commission's agenda should ensure that the displaced persons in Guatemala could begin to exercise their rights effectively.

27. Mr. CERNUDA (Socialist International) said that, since its inception, his organization had focused on the defence of the fundamental rights of the individual throughout the world.

28. It was therefore concerned about the situation of the national non-governmental organizations in Cuba that were fighting for the civil and political rights of the citizens of that country. The Council Socialist International, which had met two weeks earlier in Athens, had suggested to the Cuban Government that it should release all political prisoners.

29. The CHAIRMAN informed the speaker that his comments were not relevant to the agenda item under consideration.

30. Mr. CERNUDA (Socialist International) appealed to the Commission to show its goodwill by allowing, under agenda item 11 (a), all the non-governmental organizations of the world and especially of Cuba to have all the necessary facilities for discharging their task.

31. Mr. PARKER (Human Rights Advocates) specified that he was speaking on agenda item 11 (a) and, in particular, in application of Commission resolution 1992/57 entitled "Civil defence forces", in which the Commission had requested that information on domestic law and practice relating to civil defence forces, as well as comments concerning the relationship between civil defence forces and human rights should be conveyed to it. In many countries, there were civil defence forces which were responsible for serious human rights violations, and his organization would focus on the situation it knew best, the one prevailing in Guatemala.

32. During the reign of terror that existed in Guatemala in the late 1970s and the early 1980s, the Guatemalan Government had instituted civil patrols as part of its strategy to repress the guerrillas and to control the indigenous population, which it thought was too susceptible to guerrilla influence. Although the Government claimed that service in the civil patrols, which were usually composed of indigenous people, was voluntary, all the evidence pointed to the fact that the latter were forced to serve under threat of death. The establishment of the civil patrols had simplified the permanent and institutionalized militarization of the Guatemalan highlands. After seven years of civilian Government, despite numerous appeals from the international community to dissolve the patrols and the repeated promises made by the Guatemalan Government, the patrols were still in existence, and numbered over 500,000 men and boys, often very young.

33. Under the direction of the Guatemalan military, the civil patrols had in fact become, in the words of the United Nations Independent Expert, Mr. Tomuschat, (E/CN.4/1992/5, para. 186), "an element of uncontrollable violence". They were, in fact, the perpetrators of most of the violations of human rights - extrajudicial executions, torture, ill-treatment, illegal detentions and disappearances - committed in Guatemala since 1992. Their acts constituted violations of all the fundamental rights, such as the right to life, to liberty and security of person, the right to freedom of thought, conscience and opinion, guaranteed by the International Bill of Human Rights, but their very existence was also a violation of the right to freedom from slavery, servitude and compulsory labour, because the members of the patrols

were compelled to work for the military without remuneration. The indigenous people who were enrolled in the patrols could no longer migrate to the south of the country to work on the large plantations, as they had traditionally done. They were thus deprived of their sole source of cash income, and that had caused an increase in the incidence of malnutrition among the rural population.

34. The existence of the civil patrols, in short, constituted a violation of the right to equality and to freedom for all discrimination and of the right of children to be free from economic and social exploitation. Those units were also inherently racist in character, as they were composed almost exclusively of members of the indigenous communities. Finally, patrol leaders enjoyed impunity, because they were backed by the army. The civil patrol system had been repeatedly condemned by domestic human rights organizations as well as by the international community and by the United Nations Independent Expert. However, the Guatemalan Government refused to abolish the patrols or even modify their method of recruitment so as to create a truly voluntary patrol system. Human Rights Advocates therefore requested the Commission to take more definitive action to solve the seemingly intractable problem of human rights violations in Guatemala, in which the civil patrols played a major role. It urged the Commission to include Guatemala among the countries whose case was considered under agenda item 12 and to appoint a special rapporteur to monitor the evolution of the situation in Guatemala.

35. Mr. ADOSSAMA (World Association for the School as an Instrument of Peace (EIP)) said that the current evolution of the world was increasingly marked by a moral and spiritual crisis which called for a restructuring of the foundations of society. It was therefore essential to rethink the contents of teaching programmes in order to train citizens who were free and respected moral order. A human rights education as conceived by the EIP consisted of giving young people an understanding of the principles of democracy as well as of helping them to apply those principles in their human and social relationships and to respect the rights and duties of everyone in a spirit of mutual tolerance and understanding. The young should be taught to eschew violence and hatred and to give priority to dialogue and negotiation.

36. Unfortunately, at present few faculties of educational science included compulsory courses on human rights and democracy in their teaching programmes. Furthermore, few countries had made such courses official in the primary, secondary and vocational schools.

37. Proceeding from that basis, and with the cooperation of its national branches, comprising mainly educators, the EIP was conducting research with a view to promoting education which would strive to make pupils understand the meaning of the words "human rights" and "democracy", on the basis of the Universal Declaration of Human Rights. The training of trainers was very important in that respect, because in their hands lay the self-image and the image of others that pupils would develop over the years.

38. The EIP also conducted educational missions in schools in different countries. Thus, at the prompting of the Ethnic Federation of the Roms, it had organized educational activities in various schools in Romania to integrate gypsy children. The EIP congratulated the Centre for Human Rights

on having organized in Romania a human rights teaching training session, although it regretted the fact that the activity had not been conducted in conjunction with that of the NGOs working in the field.

39. In addition to its training and development activities and its educational activities, the EIP published teaching material with a view to the integration of the teaching of human rights into school syllabuses.

40. In conclusion, the EIP recommended that the Commission on Human Rights should ensure that human rights teaching, as recognized in the Universal Declaration of Human Rights, should be made official in all schools throughout the world, that the Ministries of Education should offer their teachers an opportunity of being trained in human rights teaching by facilitating their participation in training sessions organized by the NGOs, that the Centre for Human Rights should attach greater importance to the work carried out by the NGOs in the field, and that a study on the status of human rights teaching in primary and secondary schools should be carried out in cooperation with the NGOs specializing in that field, so as to evaluate the progress and the failures of the States which were striving to promote the right to education in accordance with article 13 of the International Covenant on Economic, Social and Cultural Rights.

41. Ms. PORRAS GIMENEZ (Commission for the Defence of Human Rights in Central America (CODEHUCA)) said that given the importance of their role and responsibilities, national institutions for the protection and promotion of human rights should be provided with all the resources and the means they needed in order to carry out their task. It was vital that those institutions should not be used for political ends, and that they should be able to target the entire population, with the support of the Government.

42. However, the existence of those institutions was not in itself sufficient to put an end to the serious and systematic violations of human rights which were being committed in some countries in Central America, like El Salvador and Guatemala. The persistence of those violations was directly linked to non-compliance with the decisions and recommendations of the bodies responsible for protecting human rights and also to the impunity of the guilty; the decisions of those bodies should be made binding and their autonomy and independence should be guaranteed. Those bodies, as well as the ombudsmen, who were sometimes known as "Parliamentary High Commissions" should not confine themselves to guaranteeing the effective exercise of individual freedoms, but should also work to remove the causes of the violations of human rights, which could sometimes be traced to economic and social problems.

43. National institutions for the promotion and protection of human rights should also work closely with non-governmental organizations in order to draw on their experience. Lastly, it was indispensable that the training programmes for officials who worked in those institutions should be strengthened; that would simplify the effective application of the international human rights instruments. Arrangements should be made to ensure that those officials, as well as all members of human rights defence organizations were able to work in complete security. Indeed, some were exposed to attacks or threats in certain Central American countries, particularly El Salvador.

44. CODEHUCA regretted the absence of legislation which would enable internally displaced persons who were socially, economically and politically marginalized to enjoy all human rights. Every possible solution should be envisaged in order to meet their protection and assistance needs and for that it was necessary to listen first of all to those who were encountering the difficulties of that situation on a daily basis. It was regrettable that displaced persons, who were denied the right to speak out in their own country, were also unable to have access to bodies like the Commission on Human Rights, where international policy and legislation on human rights were defined.

45. Mr. KHALIL (Islamic African Relief Agency (IARA)) recalled that the displacement of population in Sudan had begun in 1984, and that it had been caused by the famine and severe drought in the west and east of the country. The persons thus displaced had taken refuge in the towns in the centre and the north, where the international community had been quick to assist them.

46. The civil war which had broken out in Sudan had subsequently caused the displacement of many people from the south to the north. Two large-scale international assistance operations had been set up by the United Nations, the Sudanese Government and several NGOs to help the displaced persons from north and south in both the government-held and the rebel-controlled areas. The persons displaced from other areas had received assistance under other programmes, financed by the United Nations and implemented by national and international NGOs.

47. It should be noted that those displaced persons were now living peacefully with other Sudanese ethnic communities in different parts of Sudan. It was obvious that if the refugees from the south had feared ethnic or religious intolerance in the north they would have fled to the neighbouring countries and that religion was therefore not the real cause of the conflict in Sudan. All the displaced persons were receiving help of all kinds from different local NGOs such as the Islamic African Relief Agency or the Sudanese Council of Churches or from international NGOs like the Co-operative for American Relief Everywhere (CARE), ADRA, OXFAM, Save the Children Fund (UK) and others. The EEC, Japan, the United States Agency for International Development (USAID) and the World Food Programme (WFP) also provided relief.

48. At the State level, all the NGOs involved in food distribution were members of the State Relief Committee which met regularly to discuss the situation and allocate the food among the different camps on the basis of data provided by the NGOs monitoring field activities. The level of services provided to the displaced was equal, if not higher, than that given to the other Sudanese citizens living in the neighbouring squatter areas. Under an agreement recently signed between the United Nations and the various parties in Nairobi, the Sudanese parties had agreed that the food should be distributed in all the regions whether SPLA- or government-held and that the relief to the south should be transported by the Nile. The NGOs and the Sudanese Government had also very recently signed a new cooperation agreement.

49. The problem of the displaced persons in the developing countries could only be resolved by concentrating aid on developing those countries instead of continuing to provide relief assistance, which usually led to a "dependency

syndrome". Politicization of the problem would only increase the number of displaced persons. Any talk about human rights in Africa would obviously be futile, unless the problem of extreme poverty on the continent was addressed. It was therefore important to help the African countries to emerge from the current economic crisis. Aid provided for that purpose should not be subject to any conditions, for over the last 30 years, the African countries had experienced every possible type of regime without attaining any improvement in living conditions or human rights. The President of the World Bank had recently admitted that, during those years, financial aid had mainly been used as an instrument of the cold war. It was time for the international financial institutions and the Governments of the wealthy countries to change their approach and to understand that respect for human rights was closely linked to development. The IARA strongly recommended that the Commission on Human Rights should bear that precept in mind when considering the development of new methods, within the United Nations system, of improving the effective enjoyment of human rights.

50. Mr. TEITELBAUM (American Association of Jurists) said that the establishment of an international criminal court, for which all the defenders of human rights had long been hoping, would be a very important milestone in the fight against impunity. However, an institution of that kind was not improvised. Nor should it be forgotten that the situation today was not the same as at the end of the Second World War.

51. In the first place it was vital for an international court to be permanent in nature, in order to secure its independence and impartiality. Further, the court should constitute an important stage in the process of the universalization of respect for human rights which began in Nuremburg and should not be a return to the point of departure that Nuremburg had represented, in a completely different context.

52. The studies carried out on that subject for a number of years, by the International Law Commission, should be studied with the utmost attention as well as the conditions governing the establishment of other international courts, such as the International Court of Justice, the Inter-American Court of Human Rights and the European Court of Human Rights. It was obvious that the establishment and operational procedures of a criminal court should be the outcome of a consensus by the international community, based on the principle of the legal equality of all States. It was therefore out of the question that it should be established by the Security Council. Moreover, as General Assembly resolution 46/54, paragraph 3 expressly stated, it was up to the Assembly to "provide guidance on the matter". It was therefore also the responsibility of the Assembly to decide upon the establishment of such a court, in accordance with Articles 10 and 13 of the Charter. Consequently, in adopting its resolution 808 (1993), the Security Council had exceeded its powers.

53. Lastly, it should be recalled that, in its 1992 report, the Working Group instructed by the International Law Commission to consider the question of the establishment of an international criminal court had taken the view that the court should be set up under a treaty. It would be remembered that the International Court of Justice itself had been set up under the Charter of the

United Nations, the Inter-American Court under the Inter-American Convention on Human Rights and the European Court under the European Convention on Human Rights. They were therefore all treaty bodies.

54. To sum up, neither the studies of the International Law Commission requested by the General Assembly, nor the precedents constituted by the International Court and the regional courts made it possible to say that the Security Council had authority to set up an international criminal court or to elect its members. Still less could one legitimately base oneself on Chapter VII of the Charter, relating to coercive measures. It would indeed be shocking to invoke Chapter VII because that would be tantamount to equating the establishment of a court of justice with a coercive measure. The impartial administration of justice by competent bodies should not be confused with the use of force to apply the law. The Commission was thus confronted with an additional factor in the debate concerning the reforms which could be made to the composition and functioning of the Security Council, and there was justification for raising the matter in the Commission because the Security Council had abrogated to itself the functions of a mechanism for the defence of human rights.

55. The world as conceived at Yalta no longer existed and the institutions which had given it legitimacy no longer had any meaning; therefore, the system of having five permanent members of the Security Council should be abolished and, consequently, the right of veto, thus restoring the principle of the legal equality of all States. Furthermore, the membership of the Council should be in proportion to the current number of States Members of the Organization. In addition, if the existence of permanent members was deemed to be justified, countries which had a significant economic or demographic potential should be made permanent members and account should be taken of regional distribution.

56. He emphasized the need for continuing and effective coordination among the various mechanisms for the protection of human rights. In order to make that coordination easier and in order to have, at all times, a comprehensive and objective overview of the human rights situation in each country, a central computerized data bank in the Centre for Human Rights was essential. Such a bank would make it possible to monitor all situations and the cases from the viewpoint of special procedures, mechanisms for monitoring the implementation of the Covenants and the 1503 procedure. The integration of the 1503 procedure into a central computerized system meant abandoning its confidential nature, which, all things considered, would simply promote the effective exercise of human rights.

57. Although the Centre had three or four times more work than in the early 1980s, its staff had remained unchanged. In 1992, the Secretary-General had proposed creating 16 new professional posts in the Centre, but the Fifth Committee of the General Assembly had decided to create only 5. He regretted that the virtually unanimous statements by the States calling for the strengthening of the human rights defence mechanisms had gone unheeded and that the Centre lacked even the minimum level of essential human and financial resources.

58. The Association of American jurists considered that if States were really concerned about human rights, that concern should take the form primarily of support for the systems and procedures which had been developing and being gradually consolidated for nearly half a century, within the United Nations system.

59. Ms. GONZALEZ (Latin American Federation of Associations of Relatives of Disappeared Detainees (FEDEFAM)), speaking first of all on agenda item 11 (b), explained that, in Guatemala, one of the institutions responsible for ensuring the protection of human rights was the Human Rights Commission of Guatemala, to which the services of the Human Rights Procurator were accountable. That body, whose work had been praised by Mr. Tomuschat, the Independent Expert of the United Nations Commission on Human Rights, had set up a National Commission for the Investigation of Disappearances, but it was in fact indistinguishable from the offices of the Procurator, because it was composed of the Procurator himself, the Deputy Procurator and his assessors. FEDEFAM's proposal, which had envisaged a body with a much wider membership, including not only representatives of the families of the disappeared persons and non-governmental organizations for the protection of human rights, but also representatives of other government entities including the Congress itself, had been disregarded.

60. After having been in existence for two years, the commission had neither reported on its work nor cleared up any cases of enforced disappearances. FEDEFAM therefore urged the Guatemalan Government to authorize the establishment of a real commission of enquiry which could succeed in bringing to justice and punishing those responsible for the enforced disappearance of more than 40,000 persons in Guatemala.

61. Mr. GRILLO (Colombia), speaking on a point of order, said that he did not object to criticisms being levelled at his country, but he objected to the fact that the representative of FEDEFAM did not adhere strictly to the agenda item being discussed.

62. Ms. GONZALEZ (Latin American Federation of Associations of Relatives of Disappeared Detainees), continuing her statement, said that relatives of the victims and human rights defenders in Colombia were not afraid of saying that there had been a decline in investigations and sanctions of human rights abuses attributed to State officials. The Human Rights Procurator had himself declared that, out of 10,000 investigations of members of the army, only 700 had been carried out by his services, that over 50 per cent of those cases had quickly been filed indefinitely, because the allegations were regarded as unfounded, and that in those trials to which the other cases had given rise, in only 27 instances had punishment been imposed. The persons acquitted included the members of a military patrol that had been accused of killing the Swiss nun Hildegard Feldman, in September 1990. The patrol had been cleared of the charges on the pretext that it had acted in self-defence, in reply to the aggression by a column of guerrilla fighters.

63. Turning to agenda item 11 (a), she stressed the importance of the report (document E/CN.4/1993/30) that had been drawn up by the Secretary-General, in application of General Assembly resolution 45/163 entitled "Strengthening of United Nations action in the human rights field through the promotion of

international cooperation, and the importance of non-selectivity, impartiality and objectivity". In his conclusions and recommendations, the Secretary-General suggested that the Commission should refer the question of those three principles of non-selectivity, impartiality and objectivity to the Sub-Commission for in-depth study.

64. Despite the complaints every year of human rights violations in various parts of the world, few countries were subjected to specific monitoring by the Commission on Human Rights and, in most cases, those countries were merely informed of the complaints without anything happening from one session to the next. The representatives of the official bodies that should be defending human rights in the different countries invariably came and reported to the Commission on the effectiveness of their activities, which they always did their utmost to present in a favourable light.

65. Having regard both to the violations of human rights and to the institutions responsible for the protection of those rights, FEDEFAM proposed that a rapporteur or an expert should be entrusted, under agenda item 11, with the following tasks: firstly, gathering all the information coming from different sources concerning complaints about violations of human rights and about the creation and/or the functioning of the institutions responsible for protecting those rights, and, secondly studying that information, verifying its accuracy and informing the Commission, by making recommendations and suggestions on each situation. If the Commission had reliable information as a result of the work of the rapporteur or the expert, which the work of other experts, rapporteurs and working groups would complement, it could thus apply itself to ensuring non-selectivity, impartiality and objectivity and to monitoring situations which really deserved its attention.

66. The CHAIRMAN recalled that statements should be confined to the agenda item under consideration.

67. Mr. BLAKE (Service, Peace and Justice in Latin America) pointed out that while the peoples of Latin America had made considerable progress since the time when they had fought against dictatorial Governments, and that although the international instruments adopted by the different international bodies such as the Organization of American States (OAS) and the United Nations had been ratified by the majority of the Latin American States, those peoples were still a long way from the full enjoyment of human rights. It was true that the Latin American countries had established institutions for the protection of human rights, but the latter were far from having attained their objectives. The activities of the ombudsman, an institution which had originated in Scandinavia, had not yielded the results anticipated, because they were subjected to constant surveillance, either by the law enforcement authorities or by the Public Prosecutor's Office, and that deprived them of their main feature. Moreover, corruption was one of the major defects of the judicial institutions of the Latin American countries. That, for example, was the case in the Republic of Panama, where judicial terrorism, a new form of violation of human rights, was carried out with impunity.

68. The American Convention on Human Rights provided that the principle of habeas corpus, in its various forms, constituted a form of protection of human rights from which there could be no derogation, even during states of

emergency. In theory, the ordinary man also had other remedies available to him but sometimes the level of corruption made it impossible to avail oneself of such remedies. In the case of Panama, the higher ecclesiastical hierarchy had been obliged to make public a document in which it denounced the scandalous corruption that existed in the Government.

69. It should also be recalled that, in Latin America, there were laws on the statute of limitations. Hence, in Argentina and Uruguay, those mechanisms facilitated the practice of impunity.

70. Regarding the procedures whereby the Commission on Human Rights decided to examine the cases of violations, the one established by Economic and Social Council resolution 1503 (XLVIII) was relatively effective, but would yield much more satisfactory results if formulated in a simpler manner, intelligible to everyone. Similarly, the Commission would benefit if, when the non-governmental organizations took the floor, there was an expert or a rapporteur in the room who noted the complaints and asked the NGOs to provide further information, always under the auspices of the Commission.

71. On behalf of his organization, he requested that an expert committee should be set up to carry out a priority study which would make it possible to determine the different mechanisms of impunity which impeded both the application of human rights and investigations into the perpetrators of violations of those rights and the imposition of the appropriate sanctions in the Latin American countries. His organization also requested the Commission to consider observing, on a continuing basis, the case of certain States like Colombia, Guatemala, Peru and El Salvador, where a continuing range of violations occurred.

72. Ms. TOJ (International Indian Treaty Council) said that she wished to focus her statement on Commission resolution 1992/57 entitled "Civil defence forces" in which the Commission had requested the Secretary-General to ask Governments and intergovernmental and non-governmental organizations for information on domestic law and practice.

73. Those forces, which had different names depending on the countries, were organized virtually everywhere and caused the population unspeakable harm. They were generally under the direct orders of the army. They took part in fighting in those countries where armed conflicts occurred and their members were often used as "cannon fodder". They were instruments of repression and were often the main obstacle to the promotion of human rights and fundamental freedoms, especially in the rural areas where indigenous populations were concentrated. Nevertheless, the indigenous populations, whose under-age children were often forcibly conscripted were in the process of organizing themselves to demand the dissolution of those civil defence patrols. They were sometimes backed by members of those patrols; for example, in Santa Cruz, El Quiche, Guatemala, the latter had publicly testified, before the Deputy Human Rights Procurator and the local Governor, that they had been conscripted by force and had decided to desert. Because of that decision they had been threatened and intimidated by the army. The civil defence patrols helped to create the atmosphere of terror in which the indigenous peoples lived and they committed the most serious crimes, usually because their leaders compelled

them to do so (abductions, torture, assassinations, intimidation, etc.), against the populations in general, and against human rights activists in particular.

74. Turning to the question of internally displaced persons, she recalled that the Representative of the Secretary-General, Mr. Francis Deng, had pointed out that in order to tackle with the problem from a legal standpoint and to decide upon the policy that would be adopted by the United Nations in that regard, it would be helpful to have an overall idea of the causes and consequences of the displacement of persons and also to arrive at a better definition of the concept of "displaced person".

75. There was for example the case of Guatemala, which had been the scene of internal and external displacement following the scorched earth policy of the early 1980s and was currently experiencing displacement within the borders of the Communities in Resistance of the mountainous regions and of Ixcàn. In statements to the press, the army spokesman and the Minister of Defence had accused those communities of being involved in the guerrilla, and they had thus justified the military operations against those civilian populations. The latter had tried to enter into a dialogue with the military hierarchy in order to live in peace and to trade with the neighbouring communities - without being prevented by the military posts near the areas where they lived or being compelled to take part in the activities of the civil defence patrols. Unfortunately, that initiative and many representations and appeals to the authorities had been in vain.

76. The International Indian Treaty Council requested the members of the Commission to call upon the Government of Guatemala to undertake before it to set a date for the dissolution of the civil defence patrols, to order the dissolution of the paramilitary bands directed by the army high command; the Government and the army should recognize the Communities in Resistance as being civilian populations, which in fact they were. As long as instruments of repression existed, it would be pure demagogy to speak of the effective enjoyment of human rights.

The meeting rose at 1.15 p.m.